

114TH CONGRESS  
2D SESSION

# H. R. 5019

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IN THE SENATE OF THE UNITED STATES

MAY 9, 2016

Received; read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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## AN ACT

To direct the Securities and Exchange Commission to provide a safe harbor related to certain investment fund research reports, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2        This Act may be cited as the “Fair Access to Invest-  
3    ment Research Act of 2016”.

4 **SEC. 2. SAFE HARBOR FOR INVESTMENT FUND RESEARCH.**

5        (a) EXPANSION OF THE SAFE HARBOR.—Not later  
6    than the end of the 45-day period beginning on the date  
7    of enactment of this Act, the Securities and Exchange  
8    Commission shall propose, and not later than the end of  
9    the 180-day period beginning on such date, the Commis-  
10   sion shall adopt, upon such terms, conditions, or require-  
11   ments as the Commission may determine necessary or ap-  
12   propriate in the public interest, for the protection of inves-  
13   tors, and for the promotion of capital formation, revisions  
14   to section 230.139 of title 17, Code of Federal Regula-  
15   tions, to provide that a covered investment fund research  
16   report that is published or distributed by a broker or deal-  
17   er—

18              (1) shall be deemed, for purposes of sections  
19    2(a)(10) and 5(c) of the Securities Act of 1933 (15  
20   U.S.C. 77b(a)(10), 77e(c)), not to constitute an  
21   offer for sale or an offer to sell a security that is the  
22   subject of an offering pursuant to a registration  
23   statement that is effective, even if the broker or  
24   dealer is participating or will participate in the reg-  
25   istered offering of the covered investment fund’s se-  
26   curities; and

7       (b) IMPLEMENTATION OF SAFE HARBOR.—In imple-  
8 menting the safe harbor pursuant to subsection (a), the  
9 Commission shall—

10                         (1) not, in the case of a covered investment  
11 fund with a class of securities in substantially con-  
12 tinuous distribution, condition the safe harbor on  
13 whether the broker's or dealer's publication or dis-  
14 tribution of a covered investment fund research re-  
15 port constitutes such broker's or dealer's initiation  
16 or reinitiation of research coverage on such covered  
17 investment fund or its securities;

18 (2) not—

(A) require the covered investment fund to have been registered as an investment company under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.) or subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m, 78o(d)) for any period exceeding

1           the period of time referenced under paragraph  
2           (a)(1)(i)(A)(1) of section 230.139 of title 17,  
3           Code of Federal Regulations; or

4                   (B) impose a minimum float provision ex-  
5                 ceeding that referenced in paragraph  
6                 (a)(1)(i)(A)(1)(i) of section 230.139 of title 17,  
7                 Code of Federal Regulations;

8                   (3) provide that a self-regulatory organization  
9                 may not maintain or enforce any rule that would—

10                  (A) prohibit the ability of a member to  
11                 publish or distribute a covered investment fund  
12                 research report solely because the member is  
13                 also participating in a registered offering or  
14                 other distribution of any securities of such cov-  
15                 ered investment fund; or

16                  (B) prohibit the ability of a member to  
17                 participate in a registered offering or other dis-  
18                 tribution of securities of a covered investment  
19                 fund solely because the member has published  
20                 or distributed a covered investment fund re-  
21                 search report about such covered investment  
22                 fund or its securities; and

23                  (4) provide that a covered investment fund re-  
24                 search report shall not be subject to section 24(b) of  
25                 the Investment Company Act of 1940 (15 U.S.C.

1       80a-24(b)) or the rules and regulations thereunder,  
2       except that such report may still be subject to such  
3       section and the rules and regulations thereunder to  
4       the extent that it is otherwise not subject to the con-  
5       tent standards in the rules of any self-regulatory or-  
6       ganization related to research reports, including  
7       those contained in the rules governing communica-  
8       tions with the public regarding investment compa-  
9       nies or substantially similar standards.

10      (c) RULES OF CONSTRUCTION.—Nothing in this Act  
11     shall be construed as in any way limiting—

12           (1) the applicability of the antifraud or  
13       antimanipulation provisions of the Federal securities  
14       laws and rules adopted thereunder to a covered in-  
15       vestment fund research report, including section 17  
16       of the Securities Act of 1933 (15 U.S.C. 77q), sec-  
17       tion 34(b) of the Investment Company Act of 1940  
18       (15 U.S.C. 80a-33), and sections 9 and 10 of the  
19       Securities Exchange Act of 1934 (15 U.S.C. 78i,  
20       78j); or

21           (2) the authority of any self-regulatory organi-  
22       zation to examine or supervise a member’s practices  
23       in connection with such member’s publication or dis-  
24       tribution of a covered investment fund research re-  
25       port for compliance with applicable provisions of the

1       Federal securities laws or self-regulatory organization  
2       rules related to research reports, including those  
3       contained in rules governing communications with  
4       the public.

5       (d) INTERIM EFFECTIVENESS OF SAFE HARBOR.—

6           (1) IN GENERAL.—From and after the 180-day  
7       period beginning on the date of enactment of this  
8       Act, if the Commission has not adopted revisions to  
9       section 230.139 of title 17, Code of Federal Regula-  
10      tions, as required by subsection (a), and until such  
11      time as the Commission has done so, a broker or  
12      dealer distributing or publishing a covered invest-  
13      ment fund research report after such date shall be  
14      able to rely on the provisions of section 230.139 of  
15      title 17, Code of Federal Regulations, and the  
16      broker or dealer's publication of such report shall be  
17      deemed to satisfy the conditions of subsection (a)(1)  
18      or (a)(2) of section 230.139 of title 17, Code of Fed-  
19      eral Regulations, if the covered investment fund that  
20      is the subject of such report satisfies the reporting  
21      history requirements (without regard to Form S-3  
22      or Form F-3 eligibility) and minimum float provi-  
23      sions of such subsections for purposes of the Com-  
24      mission's rules and regulations under the Federal  
25      securities laws and the rules of any self-regulatory

1 organization, as if revised and implemented in ac-  
2 cordance with subsections (a) and (b).

3 (2) STATUS OF COVERED INVESTMENT FUND.—  
4 After such period and until the Commission has  
5 adopted revisions to section 230.139 and FINRA  
6 has revised rule 2210, for purposes of subsection  
7 (c)(7)(O) of such rule, a covered investment fund  
8 shall be deemed to be a security that is listed on a  
9 national securities exchange and that is not subject  
10 to section 24(b) of the Investment Company Act of  
11 1940 (15 U.S.C. 80a-24(b)). Communications con-  
12 cerning only covered investment funds that fall with-  
13 in the scope of such section shall not be required to  
14 be filed with FINRA.

15 (e) DEFINITIONS.—For purposes of this Act:

16 (1) The term “covered investment fund re-  
17 search report” means a research report published or  
18 distributed by a broker or dealer about a covered in-  
19 vestment fund or any securities issued by the cov-  
20 ered investment fund, but not including a research  
21 report to the extent that it is published or distrib-  
22 uted by the covered investment fund or any affiliate  
23 of the covered investment fund.

24 (2) The term “covered investment fund”  
25 means—

10 (B) a trust or other person—

20 (iii) that provides in its registration  
21 statement under the Securities Act of 1933  
22 that a class of its securities are purchased  
23 or redeemed, subject to conditions or limi-  
24 tations, for a ratable share of its assets.

Passed the House of Representatives April 28, 2016.

Attest: KAREN L. HAAS,

Clerk.